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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10

11 JOHN E. MITCHELL,

12 Plaintiff,

13 v.

14 R. DIAZ, et al.,

15 Defendants.  
16

Case No. 1:22-cv-00006-JLT-EPG (PC)

ORDER ADOPTING IN FULL THE  
SCREENING FINDINGS AND  
RECOMMENDATIONS

(Docs. 24 & 27)

17 The magistrate judge entered screening findings and recommendations, recommending  
18 that the case proceed on Mitchell's First Amendment Free Exercise claim against Defendant  
19 Rodriguez. (Doc. 27 at 14-15). The magistrate judge recommended dismissing Mitchell's claim  
20 against Rodriguez for retaliation in violation of the First Amendment and dismissing his claim  
21 against Defendants Stanley and Rodriguez for deprivation of his religious property in violation of  
22 his Fourteenth Amendment due process rights for failure to state a claim. (*Id.*) The magistrate  
23 judge recommended that all other claims be dismissed without prejudice because they were  
24 unrelated. (*Id.*)

25 According to 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this Court has conducted a *de*  
26 *novo* review of this case. Having carefully reviewed the entire file, including Plaintiff's  
27 objections, the Court **ADOPTS IN FULL** the findings and recommendations.

28 Mitchell raises numerous objections. (Doc. 28) Mitchell objects to the finding that his

1 complaint does not sufficiently plead the connection between the protected conduct and adverse  
2 action for his retaliation claim. (Doc. 28 at 2.) The magistrate judge found the complaint did not  
3 contain facts to suggest that Rodriguez’s withholding of Mitchell’s silver chain and medallion  
4 was *because of* Mitchell having filed a 602 staff complaint against Rodriguez or having filed a  
5 motion in his then-pending district court case reporting the conduct. (Doc. 27 at 12-13.) The  
6 findings and recommendations note that the complaint contains no allegations suggesting a causal  
7 connection and it does not allege Rodriguez was even aware of Mitchell’s complaints. (*Id.*)  
8 Mitchell argues, however, that the “timing and or sequence of events” suggests a causal  
9 connection. (Doc. 28 at 2.)

10 According to Mitchell’s amended complaint, on September 28, 2019, Mitchell requested  
11 filings from his then-pending district court litigation, which Rodriguez refused to provide. (Doc.  
12 24 at 4.) On October 10, 2019, Mitchell submitted a 602 staff complaint against Rodriguez and a  
13 motion in his district court case reporting Rodriguez’s failure to provide the district court filings.  
14 (*Id.*) Approximately three weeks later, Rodriguez engaged in the alleged retaliatory conduct by  
15 refusing to give Mitchell his religious chain and medallion. (*Id.*) Mitchell alleges that Rodriguez  
16 said “602 it,” when he refused to give Mitchell his religious property. (*Id.*) Although timing and  
17 sequence of events “can properly be considered as circumstantial evidence of retaliatory intent,”  
18 suspect timing alone does not suffice to plead a retaliation claim when a substantial gap exists  
19 between the protected conduct and retaliatory action. *Pratt v. Rowland*, 65 F.3d 802, 808 (9th Cir.  
20 1995); *see also Williams v. Botich*, 2010 WL 11534578, at \*7 (C.D. Cal. Sep. 3, 2010), *R&R*  
21 *adopted*, 2010 WL 11537529 (C.D. Cal., Sep. 24, 2010), *aff’d*, 459 Fed. App’x 620 (9th Cir.  
22 2011). However, close temporal proximity may sufficiently imply a causal link. *Compare*  
23 *Norwood v. Robinson*, 2012 WL 6628894, at \*2 (E.D. Cal. Dec. 19, 2012) (finding three weeks  
24 between filing a grievance complaint and the confiscation of plaintiff’s property sufficient to infer  
25 causation); *with Lewis v. Wagner*, 2016 WL 11281165, at \*8 (S.D. Cal. June 7, 2016) (finding  
26 retaliation claim insufficiently pled where plaintiff’s only causal link was that the adverse action  
27 occurred “a little more than a month” after his First Amendment conduct).

28 Three weeks passed between Mitchell’s filing of his 602 staff complaint and his motion in

1 the pending district court. The three-week gap somewhat thinly implies a retaliatory connection.  
2 On the other hand, Mitchell's additional allegation that Rodriguez mentioned filing a 602  
3 complaint while withholding the religious property adds little. The 602 process is the proper  
4 course for an inmate who objects to a correctional officer's conduct. Referring Mitchell to this  
5 process—without any showing Rodriguez was aware of the prior complaint—as evidence of  
6 retaliation goes too far.

7 Unlike in *Willard v. Sebok*, 2014 WL 12966930, at 6 (C.D. Cal. Feb. 6, 2014), Rodriguez  
8 mentioned the 602 procedures rather than mentioning any particular grievance submitted by any  
9 inmate. Taking the facts in the light most favorable to Mitchell and accepting reasonable factual  
10 inferences from his allegations, the Court finds insufficient allegations to plead a First  
11 Amendment retaliation claim.

12 Mitchell objects also to the dismissal of claim eight, in which he alleges Defendants  
13 Gonzalez and Leyva retaliated against Mitchell by making him remove the word “retaliation”  
14 from his staff grievances and complaints, including a complaint against Rodriguez following the  
15 withholding of his religious property. (Doc. 28 at 2-3.) The magistrate judge recommended  
16 dismissing this claim as unrelated and as improper joinder of parties under Federal Rules of Civil  
17 Procedure 18 and 20. (Doc. 27 at 8-9.) Mitchell objects and argues that the claims are directly  
18 related to claim one because Gonzalez and Leyva required Mitchell to remove “retaliation” from  
19 the staff complaint against Rodriguez, which resulted from Rodriguez's alleged deprivation of  
20 religious property. (Doc. 28 at 2-3.) Mitchell argues that “claim 8 did not come to fruition without  
21 claim one.” (*Id.*) Rule 20(a) does not permit a plaintiff to join multiple defendants under one  
22 complaint unless the claims both arise from the same transaction, occurrence, or series of  
23 transactions or occurrences *and* the claims involve common questions of law or fact. Fed. R. Civ.  
24 P. 20(a).

25 In light of the Court's finding above, the allegations of claim eight are not sufficiently  
26 related to claim one to permit joinder of the claim and additional defendants. Mitchell's  
27 allegations in claim eight do not arise from a series of occurrences upon which claim one arises.  
28 Accordingly:

1. The findings and recommendations issued by the magistrate judge on September 9, 2022, (Doc. 27), are **ADOPTED IN FULL**.
2. This case shall proceed on Claim One on the First Amendment Free Exercise claim claim against Defendant Rodriguez.
3. Plaintiff's claims against Defendants Stanley and Rodriguez for depriving Plaintiff of his religious property in violation of his Fourteenth Amendment due process rights are **DISMISSED** for failure to state a claim.
4. All other claims are **DISMISSED without prejudice**, as unrelated.
5. The Clerk of Court is directed to reflect the dismissal of all Defendants currently listed on the Court's docket, except T. Rodriguez.
6. This case is referred to the magistrate judge for further proceedings.

IT IS SO ORDERED.

Dated: **November 7, 2022**

  
UNITED STATES DISTRICT JUDGE